Fairbanks v. Boston Storage Warehouse Co., 189 Mass. 419; *Meehan v. Morewood*, 52 Hun (N. Y.) 566. In determining whether or not an act is within the scope of employment, the purpose of the act, rather than its method of performance, is the test. *Cobb v. Simon*, 119 Wis. 597. An assault by a servant may be within the scope of the employment so as to render the master liable. *McClung v. Dearborne*, 134 Pa. St. 396; *Barden v. Felch*, 109 Mass. 154; *Houston & T. Cent. Ry. Co. v. Bell*, supra. However, an assault by a servant not committed as a means or for the purpose of performing the work which he was employed to do is ordinarily not within the scope of his employment and the master is not liable. *Mogk v. Chicago City Ry. Co.*, 80 Ill. App. 411; *Fairbanks v. Boston Storage Warehouse Co.*, supra; *Meehan v. Morewood*, supra. If a servant shoots a third person, the act is ordinarily not within the scope of his employment, especially where he is not a watchman or detective or the like. *Lytle v. Crescent News & Hotel Co.*, 27 Tex. Civ. App. 530; *Turley v. B. & M. Ry. Co.*, 70 N. H. 348; *Bowen v. Ill. Cent. Ry. Co.*, 136 Fed. 306 (Defendant company held not liable for the shooting of a consignee of goods by a freight agent, without just cause, after the consignee had signed a receipt and was about to leave the office). In the principal case the act complained of was clearly unnecessary to the performance of the agent's duties, and the ruling seems contrary to the weight of authority.

E. J. M.

RAILROADS—LEASE OF TRACKAGE—LIABILITY OF LESSOR.—CENTRAL OF GEORGIA RY. CO. v. BESSINGER, 87 S. E. (Ga.) 920.—Plaintiff in error leased trackage rights to a lumber company. Defendant in error, an employee of lumber company, was injured while being carried to his work on a lumber train. *Held*, employee sustained relation of passenger to railroad company to the extent that it is bound to exercise extraordinary diligence to keep from injuring him. Russell, C. J., *dissenting*.

In the absence of authority to lease its road a railroad company that so leases is liable for all the negligence of the lessee affecting the public. *Hukill v. Maysville & B. S. R. Co.*, 72 Fed. 745. This is because it is contrary to public policy that public duties imposed by law be shifted without authority, and the lessee is therefore treated as the agent of the lessor. *Arrowsmith v. Nashville & D. R. Co.*, 57 Fed. 165. To grant trackage rights over a railroad is not an abdication of duties but a proper exercise of the franchise to operate a railroad. *Union Pacific v. C. R. I. & P. R. Co.*, 163 U. S. 564. Under such conditions there is no relation of principal and agent, and the only liability of the owner company is for failure to keep its tracks free from defects. *Hamilton v. Louisiana & N. W. R. Co.*, 117 La. 243. The holding of the principal case seems to stand alone.

R. C. W.

TITLE TO WILD GAME—CHANGE OF COMMON LAW RULE, BY STATUTE.—PEOPLE V. WILLIAMS, 155 PAC. (Colo.) 323.—The defendant was charged with unlawfully and wilfully having in his possession a portion of the

carcass of a deer contrary to the fish and game laws. The information was quashed on the ground that it charged no offense, stated no facts that constituted an offense, and was in violation of Sec. 25, Art. 2, of the state constitution, which provided that no person shall be deprived of life, liberty, or property without due process of law. The people brought error. Reversed and remanded.—*Held,* that the Revised Statutes of 1908 declaring, by Sec. 2739, all game and fish not already legally acquired, to be the property of the state, and, by Sec. 2748, possession unaccompanied by license or permit to be prima facie evidence of illegal taking and holding, made the defendant's possession of a portion of a carcass of a deer, unexplained, a violation of the act, and cast upon him the burden of proving an affirmative defense. White, Hill and Teller, JJ., *dissenting.*

At common law title to wild game was nowhere until reduced to possession. The right to regulate and even prohibit the taking thereof has, however, always been an attribute of sovereignty. *2 Bl. Comm. 410.* And under the modern police power it vests in the respective states. *Rupert v. U. S.,* 181 Fed. 87; *Commonwealth v. McComb, 227* Pa. 377; *People v. Martin,* 107 N. Y. S. 1076. But it is a police power only; those decisions which speak of a title to wild game in the whole of the people of the state collectively, do not refer to a true property right such as the state, like an individual, has in physical objects reduced to its control. *Bondi v. Mackay,* 89 Atl. (Vt.) 228; *Commonwealth v. Patsone,* 231 Pa. 46; *State v. Ashman,* 135 S. W. (Tenn.) 325. Accordingly, at common law the individual had a right to take game except as prohibited, and an indictment for violation of the game laws must show which particular provision of the statute is relied upon. *22 Cyc. 324.* The reversal of this procedure, sustained by the majority opinion in the principal case, depends upon a literal interpretation of the statute, i. e., transmission of actual title to the state. The dissent points out that since, if such were the fact, a general prohibition would be inferable, the only essential part of the statute would be the express permissions contained in Secs. 2833, 2749, 2801, 2809, and that Secs. 2753, 2759, 2876, 2877, in so far as they are prohibitions (as the majority holds) and not merely fixing of penalties, are "unnecessary and tautological." As regards the possibility of statute vesting true title in the state, see opinion of Field in *Geer v. State,* supra, and the case of *U. S. v. Shauver,* 214 F. 154 (same as regards title in migratory birds in the United States, holding it impossible by the nature of the subject matter). Also see *Acklen v. Thompson,* 122 Tenn. 43, where a statute similar to that in the principal case was held not to change the common law doctrine.

C. B.